

NOT FOR PUBLICATION UNTIL RELEASED BY THE  
HOUSE ENERGY SUBCOMMITTEE ON  
OVERSIGHT AND INVESTIGATIONS

STATEMENT OF  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
DEPARTMENT OF THE NAVY  
BEFORE THE  
HOUSE ENERGY SUBCOMMITTEE ON  
OVERSIGHT AND INVESTIGATIONS  
ON  
CLAIMS OF CONTAMINATED DRINKING WATER AT CAMP LEJEUNE  
JUNE 12, 2007

NOT FOR PUBLICATION UNTIL RELEASED BY THE  
HOUSE ENERGY SUBCOMMITTEE ON  
OVERSIGHT AND INVESTIGATIONS

The Department of the Navy, Office of the Judge Advocate General, Claims and Tort Litigation Division (OJAG Code 15), has been designated by the Secretary of the Navy as the office responsible for the adjudication of claims against the Navy and Marine Corps filed under the Federal Tort Claims Act (FTCA), as well as various other claims statutes. OJAG Code 15 also provides support to the Department of Justice (DoJ) and United States Attorneys for claims that result in litigation.

All claims alleging personal injury or death caused by contaminated drinking water at Marine Corps Base Camp Lejeune must be evaluated under the legal requirements of the FTCA. The FTCA is a limited waiver of sovereign immunity for claims against the Federal Government for personal injury, property damage, or death caused by the negligence of a Federal employee acting within the scope of his or her employment.

Administratively, the FTCA requires that a claimant first present a claim to the Federal agency alleged to have caused the injury before he or she may file a lawsuit against the United States.

- The claim must be presented in writing within two years after the claim “accrues” (i.e., knew or should reasonably have known they were injured as a result of government negligence) or the claim is forever barred.
- The claimant must allow the Federal agency at least six months to adjudicate the claim.
- If the Federal agency does not pay or deny the claim within six months, the claimant may file suit against the United States. Alternatively, the claimant may also choose not to file suit and wait for the Federal agency to adjudicate the claim.

- If the claim is denied by the Federal agency, the claimant must file suit within six months after the date of denial, or the suit is forever barred.

The Agency for Toxic Substances and Disease Registry (ATSDR), part of the Public Health Service, performed a Public Health Assessment pursuant to the requirements of CERCLA in 1997. ATSDR also conducted an Adverse Pregnancy Outcome Health Study in 1998. Although this research indicated that no health problems would be expected for adults, ATSDR could not rule out the possibility of an association between exposure to volatile organic compounds (VOCs) in drinking water at Camp Lejeune and adverse pregnancy outcomes. ATSDR has continued its study of former Camp Lejeune residents and is currently conducting an epidemiological study of children focusing on childhood cancer and birth defects. We have been informed this study is on-track to be completed in 2008.

To fairly adjudicate all claims based on available and appropriate objective information, we have decided not to adjudicate the claims until the ATSDR completes its study. Once completed, each claim will be independently adjudicated under the legal requirements of the FTCA to determine its merit.

In the meantime, while the scientific study is being conducted, we have been compiling information as claims are submitted. Each claimant receives a letter requesting specific information, including their medical records, as well as a survey to help ensure that we have all the information necessary for final adjudication.

The Navy's FTCA settlement authority is \$200,000 per claim. However, when there are multiple claims arising from a single incident and payment will likely exceed the Navy's settlement authority of \$200,000 in the aggregate, the Department of Justice must approve all

settlements arising from the single incident. Therefore, once the claims are adjudicated, the DOJ must approve any payment if recommended by the Navy.

Again, it is very important to us, as well as the claimants, that we thoroughly analyze each and every claim utilizing the best scientific research available in order to fairly adjudicate them.